



Marion County OREGON

PUBLIC WORKS

MEMORANDUM

(503) 588-5036

DATE: February 8, 2023

TO: Marion County Board of Commissioners

FROM: Marion County Planning Commission

THRU: Marion County Public Works – Brandon Reich, Planning Director

SUBJECT: Work Session on Amendments to the Marion County Urban and Rural Zone Codes – Legislative Amendment 22-001

BOARD OF COMMISSIONERS

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BACKGROUND

Generally, Marion County keeps its zone code up-to-date with changes made to state law. There have been recent changes to that the county is required to adopt into its zone code. In addition, the planning commission is recommending the county consider amendments to be consistent with state law and various clarifying amendments to the code.

COMMENTS

Comments were received regarding the board process which cannot be part of this code update. Comments were also received regarding evidence for quasi-judicial cases who pertain to individual cases and cannot be part of this code update. Comments were received regarding the notice area for a quasi-judicial case. Planning staff has already worked with the Board to expand the notice area for zone change applications to ensure adequate property owners in the area receive notice. Comments were also received requesting that the criteria requiring 80 acre minimum for a family member farm dwelling be removed.

FACTS AND ANALYSIS

Oregon Revised Statute Amendments

SB 287 (2019)	Mandatory EFU, SA, FT	Allows establishment of farm brewery.
SB 408 (2019)	Mandatory EFU, SA, FT	Prohibits land divided for utility facility to be later rezoned for commercial or industrial uses without a goal exception.

SB 2001 (2019)	Mandatory Use Standards	Legislation prohibits the county from requiring parking in conjunction with ADUs.
HB 2225 (2019)	Mandatory TC, FT	Defines “center” of subject tract for forest dwellings as well as “tract.”
HB 2844 (2019)	Mandatory EFU, SA, FT	Amends criteria for a farm crops processing facility.
HB 3024 (2019)	Mandatory EFU, SA, FT	Amends replacement dwelling criteria.
HB 2583 (2021)	Mandatory Urban and Rural Definitions	Amendments to conform with HB 2583 (2021) which prohibits limitations on maximum occupancy of a dwelling.
HB 4064 (2022)	Mandatory Definition Optional Standards	Amends definitions to clarify what kinds of dwellings are considered single-family residential. Optional to amend standards for mobile homes in residential zones.

Recent legislatures adopted a number of bills that amended state statutes. These changes should be incorporated into the zone code to be consistent with state law.

HB 2469 (2019)	Optional FT, TC	Permits relative dwelling on forest land.
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This bill permits a property owner to establish one additional dwelling on a property so that a relative may live on the property to assist the owner with the harvesting, processing of forest products or the management, operation of forest lots.

Oregon Administrative Rules

LCDD 4-2020	Mandatory TC, FT	Defines “center” of subject tract for forest dwellings as well as “tract.”
LCDD 4-2020	Optional EFU, SA, FT, TC	Permits relative dwelling on forest land.
LCDD 5-2020	Mandatory EFU, SA, FT	Prohibits land divided for utility facility to be later rezoned for commercial or industrial uses without a goal exception.
LCDD 9-2020	Mandatory EFU, SA, FT	Amends replacement dwelling criteria.
LCDD 13-2020	Mandatory EFU, SA, FT	Amends criteria for a farm crops processing facility.
LCDD 4-2021	Mandatory/Optional EFU, SA, FT, TC	Mandatory amendments to allowed uses in response to wildfire. Optional to adopt amendments related to hardship dwellings.

The Land Conservation and Development commission amended rules to implement the bills adopted by the legislature.

The planning commission recommends that the hardship provisions be adopted but not the campground provisions at this time. Those provisions were not utilized after the most recent wildfires and are restrictive in nature due to the time limits in the rule. They would be able to be adopted in the future after a disaster if there was a request for that code.

Planning Commission Recommended Amendments

Floodplain Zones	Optional	Clarifies standards for utilities in floodplain.
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Provides the option for utilities that are not elevated to be designed to prevent water from entering or accumulating. This permits pipes, electrical wiring and similar to be placed underground, for instance. Adopts into code current practice and clarifies standards.

Legislative Amendments and Procedures for Hearings	Optional	Modifies notice periods to match rural code to improve consistency in planning process.
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The urban and rural codes contain different times periods for publishing newspaper notice and noticing public hearings. These amendments would make the requirements match so that the planning process is clearer and more understandable.

EFU	Optional	Adds lot-of-record provisions to the EFU zone.
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State law permits a dwelling to be established based on the history of family ownership of the property. Historically, planning has not included this provision in the EFU code in order to minimize potential impacts from dwellings in farm zones. The existing Special Agriculture and Farm/Timber zones both include provisions for lot-of-record dwellings. This amendment includes conforming amendments to the Agriculture Element of the Marion County Comprehensive Plan.

EFU, SA, FT	Optional	Changes requirement that a secondary farm dwelling must be a manufactured home.
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State law requires secondary farm dwellings to be manufactured only when being located on a parcel where the primary farm dwelling is not located and the lot doesn't meet the minimum parcel size or farm income. Historically Marion County code has required all secondary farm dwellings to be manufactured, which is more restrictive than state law. This amendment would change county code to match state law minimum requirements.

EFU, SA, FT	Optional	Changes criteria for a secondary farm dwelling for a family member.
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Marion County code requires that a secondary farm dwelling for a family member be placed on a parcel with a minimum of 80 acres. That is more restrictive than state law which does not include this criterion. This amendment would change county code to match state law minimum requirements.

EFU, SA, FT	Optional	Adopts provisions for division of land for historic dwellings and residential homes.
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This amendment would add the ability to divide land for historic dwelling and residential homes.

Urban and Rural	Mandatory/Optional	Clarifies process when historic structure or site is proposed to be demolished or altered.
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When a historic resource is proposed to be demolished, Oregon Administrative Rule 660-023-0200(8)(a) requires the local government perform a review before it can be demolished. This amendment also incorporates criteria for that review. The rural code matches the urban code to include reviews of alterations to historic structures. Reviews of alterations are optional to adopt in the rural code.

Rural Generally Permitted Uses	Optional	Clarifies standards for second kitchen in home.
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A second kitchen has been permitted in code subject to certain development standards. This amendment would clarify that the second kitchen is only permitted in a single-family dwelling. This helps ensure that a second dwelling unit is not inadvertently created on the property, which the rural code cannot permit because of limitations in state law and is limited by zoning in the urban code.

TC	Optional	Modifies property line adjustment criteria.
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This amendment would remove the criterion that a parcel remain capable of producing at least 5,000 cubic feet per year of commercial tree species. This is not a state requirement. With the criterion in place, the minimum parcel size is 25-35 acres even if there is a dwelling. Removing this criterion permits a parcel to be adjusted to a smaller size to accommodate an existing dwelling, for instance, while the rest of the parcel can grow in size to become part of a larger timber operation.

Public	Optional	Incorporates schools as a conditional use in the zone.
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This use was removed previously because schools are generally considered an urban use. However, Brooks-Hopmore is an urban unincorporated community and there are currently school uses in the Brooks-Hopmore area. The planning commission recommends this use be added to the Public zone to permit the establishment of new schools as a conditional use, or the change or expansion of ones that already exist in the community.

General Amendments

Single-Family Residential	Optional	Removes reference to garden that is already in generally permitted uses.
Development Standards	Optional	Clarifies yard areas that setbacks and height standards apply consistent with current practice.
EFU, SA, FT	Mandatory	Clarifies property division provisions do not apply to home occupations, consistent with state law.
Floodplain	Mandatory	Removes a reference to maps which the code no longer implements.
Rural Partition	Mandatory	Corrects reference to standards which are part of the zone code which can be changed through the variance process.
EFU, SA, FT, TC	Mandatory	Clarifies extension periods for residential permits.
EFU, SA, FT, TC	Mandatory	Clarifies if declaratory statement applies to partition.
FT, TC	Mandatory	Amends language related to existing dwellings to match state rule.
Generally Permitted Uses	Optional	Adds declaratory statement for guest homes.
General Zoning	Mandatory	Adds Public as a zoning designation for that comprehensive plan designation.
Comprehensive Plan Introduction	Mandatory	Clarifies language so that language in plan matches code definitions in 17.110.304 and 16.49.146.
Comprehensive Plan Urbanization Element	Optional	Clarifies when an intergovernmental agreement is required and corrects scrivener's error.

Comprehensive Plan Conforming Amendments

The Comprehensive Plan update adds the ability of a property owner to apply for a lot-for-record dwelling in the EFU (Exclusive Farm Use) zone. The EFU zone already contains provisions for non-farm dwellings based on soils on the property. The Special Agriculture, Farm/Timber and Timber Conservation, the county's other resource zones, all contain lot-of-record provisions as well as other kinds of dwellings.

Proposals to amend the Comprehensive Plan related to non-farm dwellings must be consistent with the Statewide Planning Goals:

- Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement. This goal is met.
- Goal 2: Land use Planning. No exceptions are proposed to be taken. This amendment would apply existing provisions in statute and rule to the EFU zone. This goal is met.

- Goal 3: Agricultural Lands. This amendment would apply existing provisions in statute and rule to the EFU zone, which are already in place in the Special Agriculture and Farm/Timber zones. The code contains requirements to review the impact of new dwellings on the farming in an area where a dwelling would be established. There are further requirements in code to minimize the impact of a residence on farmland, including a special setback from farm or timber land and the inability to divide land for a dwelling. These provisions are in place currently to ensure that any impacts to farmland are minimized by the development. This goal is met by the application of code to ensure impacts to farmland are minimized.
- Goal 4: Forest Lands. The properties to which the amendment would apply are identified as agricultural lands in the county's comprehensive plan. This goal does not apply.
- Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources. This amendment adds an existing provision in statute to the EFU zone which is already implemented in other resource zones. There are existing code provisions to preserve open spaces, scenic and historic areas and natural resources and ensure compatibility among uses that are implemented when lot-of-record reviews are performed. This goal is met.
- Goal 6: Air, Water and Land Resources Quality. The properties are not within an identified air quality area. Some properties are within the Sensitive Groundwater Overlay Zone, however, there are no standards for development in situations where land divisions are not proposed. Any well would have to be permitted by the Oregon Department of Water Resources. This goal is met by provisions in the existing code.
- Goal 7: Areas Subject to Natural Disasters and Hazards. Any development must comply with the existing planning code pertaining to development in areas subject to natural disasters. This goal is met.
- Goal 8: Recreation Needs. This amendment will not affect properties used for recreational purposes. This goal does not apply.
- Goal 9: Economic Development. Because this goal focuses on commercial and industrial development, primarily within an urban growth boundary, it does not apply to this proposal.
- Goal 10: Housing. This goal applies to housing within an urban growth boundary and, thus, does not apply to this proposal.
- Goal 11: Public Facilities and Services. A subject parcel can be served by the usual rural facilities, such as the existing roadway network and electrical service. The use will rely on on-site water and septic service, if necessary. This goal appears to be met.
- Goal 12: Transportation. The amendment allows property owners to establish a dwelling using roadway facilities in the rural area which are designed for rural, residential traffic of this nature. This goal is met.

- Goal 13: Energy Conservation. The amendment allows property owners to establish a dwelling using services already present in the rural area. This goal is met.
- Goal 14: Urbanization. The amendment implements a rural use. This goal does not apply.
- Goal 15: Willamette River Greenway. Any development must comply with the standards in the county’s greenway overlay zone. This goal is implemented by that overlay zone and is, thus, met.
- Goals 16-19 apply to counties adjacent to the ocean and don’t apply to Marion County.

An amendment to the comprehensive plan related to non-farm dwellings must also be consistent with applicable Agricultural Lands policies in the county’s comprehensive plan:

AGRICULTURAL LANDS POLICIES

3. *Discourage development of non-farm uses on high value farmland and ensure that if such uses are allowed that they do not cause adverse impacts on farm uses.*

Existing code provisions to establish a lot-of-record dwelling in a resources zone, which are applied to the EFU zone by this amendment, contain requirements to review the impact of new dwellings on farming in an area where a dwelling would be established. There are further requirements to minimize the impact of a residence on farmland, including a special setback from farm or timber land and the inability to divide land for a dwelling. These provisions are in place currently to ensure that any impacts to farmland are minimized by the development and they are applied as well in the EFU zone. This policy is met.

4. *Limit residential uses on high value lands to those dwellings where past income from the sale of farm products demonstrate that the dwelling will be in conjunction with the farm use. Non-farm dwellings should be limited to existing parcels composed of non-high value soils where the dwelling will be compatible with the surrounding farm area. The approval of non-farm residences shall be based upon findings that the proposed dwelling meets the applicable criteria in OAR 660-033. Approval of a dwelling in the Farm/Timber designation shall be based on the applicable criteria in OAR 660-033 or OAR 660-006.*

This policy is amended to clarify that non-farm dwellings may be established not only on non-high value soils but on high-value soils as lot-of-record dwellings where they meet the criteria in the respective zone, as currently allowed in the Special Agriculture, Farm/Timber and Timber Conservation zones.

Amendments Not Recommended by Planning Commission to be Adopted

LCDD 4-2021	Optional EFU, SA, FT, TC	Optional to adopt amendments related to campgrounds.
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Planning Commission does not recommend adopting because of the limitations in code. It would be possible to adopt this provision into code at a later date if necessary.

Rural Generally Permitted Uses	Optional	Permits extended occupancy of a recreational vehicle on land with a dwelling.
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Oregon Revised Statute 446.126 permits the occupancy of a recreational vehicle on private land:

446.125 Occupancy on private land. *A person may occupy a manufactured dwelling or a camping vehicle on private land with the consent of the owner of the land if:*

(1) The lot, tract or parcel of land upon which the manufactured dwelling or camping vehicle is situated has an area adequate to provide safe, approved water supply and sewage disposal facilities and is not in conflict with ORS 446.310 (9).

(2) The person complies with all applicable standards of sanitation, water, plumbing and electrical and sewerage installations prescribed by the laws of this state and the rules issued thereunder, or by local authorities.

The Marion County Zoning Code implements this provision by providing for occupancy of a recreational vehicle on a property with a dwelling up to 120 days in a calendar year. In addition, a recreational vehicle may be occupied as a hardship dwelling on a property with a dwelling. The planning commission does not recommend any changes to the county zoning code that implements this statute.

Code Amendment Not Reviewed by Planning Commission

Application Requirements	Optional	Public agency or utility, or an entity authorized by a public agency or utility may file and sign an application.
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Adds ability of public agency or utility, or an entity authorized by a public agency or utility, to file an application and clarifies that public agency or utility shall sign an application filed by an entity authorized by a public agency or utility.

RECOMMENDATION

The planning commission held work sessions on the code update to provide direction to staff to prepare a proposal to consider at a public hearing. Work sessions were held on April 12, 2022 and May 17, 2022. A public hearing was held on August 16, 2022. On September 20, 2022, the planning commission recommended the Marion County Board of Commissioners approve the code amendments as described above.